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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10
11 PHANTOM E-MOTO, INC.,
12 Plaintiff,

13 v.
14 WINDHORSE TECHNOLOGIES INC.,
15 a California Corporation,
16 ALEX YIMING ZHAO, an individual, and
17 DOES 1 through 10, inclusive,
18 Defendants.

19 Case No. 8:23-cv-01356-JWH-ADSx

20 **TEMPORARY RESTRAINING
21 ORDER; ORDER TO SHOW CAUSE
22 WHY PRELIMINARY INJUNCTION
23 SHOULD NOT ISSUE; AND
24 SEIZURE ORDER**

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1 Before this Court is the *Ex Parte* Application for Temporary Restraining
2 Order, Preliminary Injunction, and Seizure Order (the “*Ex Parte* Application”)
3 filed by Plaintiff Phantom E-Moto Inc.’s (“Phantom”). The Court, after
4 considering the *Ex Parte* Application and Phantom’s Memorandum of Law in
5 support thereof, the Declarations of Zhuang Li and Jonathan M. Turner, and the
6 supporting exhibits filed therewith, and after conducting a hearing on the *Ex*
7 *Parte* Application, hereby **FINDS** as follows:

8 A. Phantom has a strong likelihood of success on its claims against
9 Defendants Windhorse Technologies Inc. (“Windhorse”) and Alex Yiming
10 Zhao (“Zhao”) (jointly, “Defendants”).

11 B. Phantom will suffer irreparable injury in the form of damage to its
12 business and reputation, lost profits, and damage to the strength of its
13 PHANTOMGOGO, PHANTOMGOGO COMMUTER R1, and R1 trademarks
14 (collectively, the “Marks”), loss of the ability to control the use of its Marks,
15 loss of the ability to control the quality of goods on which its Marks are used, and
16 loss of customers and valuable goodwill, if Defendants’ activities are not
17 temporarily enjoined and restrained.

18 C. The nature of Defendants’ conduct and infringement is such that
19 immediate relief is warranted in order to prevent Defendants from moving,
20 concealing, or destroying evidence, infringing products, computer files, or
21 records relating to the allegedly infringing products.

22 D. Accordingly, in accordance with L.R. 7-19.2, the Court finds that
23 the interest of justice requires that the *Ex Parte* Application be heard without
24 notice to Defendants.

25 In view thereof, the Court hereby **ORDERS** as follows:

26 1. Defendants, and each of them, are temporarily **ENJOINED** and
27 **RESTRINED** from the following:

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1 a. using Phantom's Marks, as well as any other colorable
2 imitation of Phantom's Marks, in any way that is likely to cause confusion,
3 mistake, or deception or to impair the distinctiveness of Phantom's
4 Marks; and

5 b. using Phantom's Marks, trade names, trademarks, or service
6 marks, or any version thereof, in connection with the description,
7 marketing, promotion, advertising, or sale of products or services not
8 associated with or approved by Phantom.

9 2. The following materials and evidence shall be seized forthwith by
10 the United States Marshals Service, assisted by one or more attorneys or
11 representatives of Phantom:

12 a. all electric scooters branded with Phantom's Marks located
13 at 2631 Lindsay Privado Dr., Ontario, California 91761 (the "Ontario
14 Warehouse");

15 b. all products and materials bearing Phantom's Marks located
16 at the Ontario Warehouse;

17 c. all electric scooters branded with Phantom's Marks located
18 at 14430 Monte Vista Ave., Chino, California 91710 (the "Chino
19 Warehouse");

20 d. all products and materials bearing Phantom's Marks located
21 at the Chino Warehouse;

22 e. all electric scooters branded with Phantom's Marks located
23 at 212 Technology Dr., Suite X, Irvine, California 92618 (the "Windhorse
24 Property");

25 f. all products and materials bearing Phantom's Marks located
26 at the Windhorse Property;

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1 g. all records documenting the manufacture, sale, receipt, or
2 transport of any of the materials identified in Paragraphs 2.a through 2.f,
3 above.

4 3. The United States Marshals Service may use all reasonable force in
5 conducting the seizure and may open doors, locks, boxes, briefcases, containers,
6 computers, and other electronic devices, of any type or nature, to locate and
7 identify materials and evidence to be seized. Attorneys and other
8 representatives of Phantom must accompany the United States Marshals
9 Service during the seizure to identify the evidence to be seized. Phantom's
10 counsel must itemize and take possession of the seized evidence, provide a copy
11 of the inventory to the United States Marshals Service, and file the inventory
12 with the Court. In addition, Phantom's counsel may record the contents of the
13 evidence by photographic, audio, and videographic means during the seizure
14 action. The United States Marshals Service shall not retain custody of the
15 seized evidence, but shall ensure that the evidence is placed in the custody of
16 Phantom's counsel. Phantom shall indemnify the United States Marshals
17 Service and hold it harmless from any suit, claim, cause of action, damage, loss,
18 or injury arising from the execution of the seizure described in this Order.

19 4. Phantom shall post Security in the amount of \$180,000 pursuant to
20 15 U.S.C. § 1116(d)(4)(A).

21 5. The Parties are **DIRECTED** to appear at 8:30 a.m. on August 25,
22 2023, before the Honorable John W. Holcomb in Courtroom 9D, located at 411
23 W. 4th Street, Santa Ana, California 92701:

24 a. to show cause why a Preliminary Injunction should not issue
25 according to the terms and conditions set forth above, and
26 b. to prove that the facts supporting seizure are still in effect as
27 required under 15 U.S.C. § 1116(d)(10)(A).

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6. Defendants are **DIRECTED** to file a brief, and evidence in support thereof, in opposition to the preliminary injunction no later than 12:00 noon on August 21, 2023. Defendants' brief shall not exceed 25 pages.

7. Phantom is **DIRECTED** to file a brief in reply to Defendants' opposition no later than 12:00 noon on August 23, 2023. Phantom's reply shall not exceed 25 pages.

8. This Order shall remain in effect until August 25, 2023, or until the conclusion of the hearing on the order to show cause why a preliminary injunction shall not issue, whichever is sooner.

9. Phantom is **DIRECTED** forthwith to serve—by personal service, U.S. Mail, overnight delivery service, email, or any other means like to accomplish notice—this Order, the summons, complaint, and all papers in support of their *Ex Parte* Application, on Defendants, and each of them. Phantom is also **DIRECTED** to file proof of such service within 48 hours thereof.

10. This Order is issued on August 11, 2023, at 1:05 p.m.

IT IS SO ORDERED.

Dated: August 11, 2023


John W. Holcomb
UNITED STATES DISTRICT JUDGE